

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): June 13, 2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: St. Louis, Norfolk Souther Railway, Bridge 90.0-W, MVS-2008-380

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: Illinois County/parish/borough: Jefferson City: Mt. Vernon
Center coordinates of site (lat/long in degree decimal format): Lat. 38.1904820° **N**, Long. -88.5105446° **W**.

Universal Transverse Mercator:

Name of nearest waterbody: Unnamed Tributary to Seven Mile Creek

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Big Muddy River

Name of watershed or Hydrologic Unit Code (HUC): 07140106

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form.

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: June 13, 2008, URS-April 28-30, 2008

☒ Field Determination. Date(s): June 12, 2008, April 17, 2008 URS Survey

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **Are no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

☐ Waters subject to the ebb and flow of the tide.

☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: .

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are and are not** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
- ☐ Wetlands adjacent to TNWs
- ☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- ☒ Non-RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- ☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- ☒ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- ☐ Impoundments of jurisdictional waters
- ☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: 100 linear feet: 15 width (ft) and/or 0.03 acres.

Wetlands: 0.06 acres.

c. Limits (boundaries) of jurisdiction based on: Established by OHWM.

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

☐ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.
Explain: .

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: .

Summarize rationale supporting determination: .

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is “adjacent”: .

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are “relatively permanent waters” (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: 1.5 Million acres

Drainage area: 0.7 square miles

Average annual rainfall: 38 inches

Average annual snowfall: 16 inches

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☒ Tributary flows through 3 tributaries before entering TNW.

Project waters are 15-20 river miles from TNW.

Project waters are 1 (or less) river miles from RPW.

Project waters are 10-15 aerial (straight) miles from TNW.

Project waters are 1 (or less) aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: NO.

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

Identify flow route to TNW⁵: The unnamed tributary flows south to Seven Mile Creek. Seven Mile Creek flows south to Casey Fork. Casey Fork flows south to Rend lake which is a Reservoir of the Big Muddy River. The Big Muddy River is a TNW..

Tributary stream order, if known: .

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural
☐ Artificial (man-made). Explain: .
☒ Manipulated (man-altered). Explain: The Tributary is crossed by a railroad bridge at the site.

Railroad piles have been driven into the bed of the tributary. The tributary crosses under IL State Route 15 just north of the bridge through a culvert.

Tributary properties with respect to top of bank (estimate):

Average width: 12-15 feet

Average depth: 1.5-2 feet

Average side slopes: **2:1**.

Primary tributary substrate composition (check all that apply):

<input checked="" type="checkbox"/> Silts	<input checked="" type="checkbox"/> Sands	<input type="checkbox"/> Concrete
<input checked="" type="checkbox"/> Cobbles	<input checked="" type="checkbox"/> Gravel	<input type="checkbox"/> Muck
<input type="checkbox"/> Bedrock	<input type="checkbox"/> Vegetation. Type/% cover:	
<input checked="" type="checkbox"/> Other. Explain: Boulder.		

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: Moderate Bank Erosion.

Presence of run/riffle/pool complexes. Explain: A continuous run within the project area.

Tributary geometry: **Meandering**

Tributary gradient (approximate average slope): 2 %

(c) Flow:

Tributary provides for: **Intermittent but not seasonal flow**

Estimate average number of flow events in review area/year: **6-10**

Describe flow regime: .

Other information on duration and volume: The tributary is represented as a "blue line" on the USGS maps.

Surface flow is: **Discrete**. Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

Tributary has (check all that apply):

<input checked="" type="checkbox"/> Bed and banks	
<input checked="" type="checkbox"/> OHWM ⁶ (check all indicators that apply):	
<input checked="" type="checkbox"/> clear, natural line impressed on the bank	<input checked="" type="checkbox"/> the presence of litter and debris
<input type="checkbox"/> changes in the character of soil	<input type="checkbox"/> destruction of terrestrial vegetation
<input checked="" type="checkbox"/> shelving	<input checked="" type="checkbox"/> the presence of wrack line
<input checked="" type="checkbox"/> vegetation matted down, bent, or absent	<input type="checkbox"/> sediment sorting
<input checked="" type="checkbox"/> leaf litter disturbed or washed away	<input type="checkbox"/> scour
<input checked="" type="checkbox"/> sediment deposition	<input type="checkbox"/> multiple observed or predicted flow events
<input checked="" type="checkbox"/> water staining	<input type="checkbox"/> abrupt change in plant community
<input type="checkbox"/> other (list):	

☐ Discontinuous OHWM.⁷ Explain: .

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

<input checked="" type="checkbox"/> High Tide Line indicated by:	<input type="checkbox"/> Mean High Water Mark indicated by:
<input type="checkbox"/> oil or scum line along shore objects	<input type="checkbox"/> survey to available datum;
<input type="checkbox"/> fine shell or debris deposits (foreshore)	<input type="checkbox"/> physical markings;
<input type="checkbox"/> physical markings/characteristics	<input type="checkbox"/> vegetation lines/changes in vegetation types.
<input type="checkbox"/> tidal gauges	
<input type="checkbox"/> other (list):	

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

⁶ A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷ Ibid.

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.).

Explain: Water levels was approximatel 2 ft and Turbid, stained water on the July 12th site visit. The URS April site visit showed a water level of approximately 1.5 feet with a consistent water volume throughout the tributary. URS observed clear water conditions .

Identify specific pollutants, if known: .

(iv) **Biological Characteristics. Channel supports (check all that apply):**

☒ Riparian corridor. Characteristics (type, average width): American Sycamore observed below the OHWM and box elder observed at the top of the Tributary bank. Riparian Corridor is extremely wide..

☒ Wetland fringe. Characteristics: minimal.

☒ Habitat for:

☐ Federally Listed species. Explain findings: .

☒ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☒ Aquatic/wildlife diversity. Explain findings: The following wildlife was observed during the URS site visit in April 2008: tadpoles, mussel relics, one live mussel and one great blue heron within the project area.

2. **Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW**

(i) **Physical Characteristics:**

(a) General Wetland Characteristics:

Properties:

Wetland size: 0.06 acres

Wetland type. Explain: Paulstrine, forested wetland with some underlying shrub and herbaceous cover. The wetland is linear and located in depressional area immediately south of the embankment of the existing railroad tracks. The area is highly disturbed, as it is used as an access road for railroad representatives.

Wetland quality. Explain: The wetland is of poor quality. and is typically dry. The wetland only contains standing water after precipitation events. This is a highly disturbed wetland due to the wetland being within the railroad access road.

Project wetlands cross or serve as state boundaries. Explain: No.

(b) General Flow Relationship with Non-TNW:

Flow is: **Ephemeral flow**. Explain: .

Surface flow is: **Confined**

Characteristics: .

Subsurface flow: **Unknown**. Explain findings: .

☐ Dye (or other) test performed: .

(c) Wetland Adjacency Determination with Non-TNW:

☐ Directly abutting

☒ Not directly abutting

☒ Discrete wetland hydrologic connection. Explain: The site conditions indicate that flow is from the wetland to the nearby tributary. The wetland likely contains standing water only during precipitation events (receives runoff from abutting railroad embankment). If the water volume is great enough, it may flow east of the tributary.

☐ Ecological connection. Explain: .

☐ Separated by berm/barrier. Explain: .

(d) Proximity (Relationship) to TNW

Project wetlands are **15-20** river miles from TNW.

Project waters are **10-15** aerial (straight) miles from TNW.

Flow is from: **Wetland to navigable waters**.

Estimate approximate location of wetland as within the **100 - 500-year** floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: No standing water during the June 12th site visit but a small area of puddling in the wetland was observed by URS during the April 2008 site visit. Wetland is immediately adjacent to the railroad embankment and within the railroad right-of-way. This is a disturbed area due to the access road used by the railroad company.

Identify specific pollutants, if known: None.

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

☒ Riparian buffer. Characteristics (type, average width): There is a riparian buffer to the south of the wetland.

☒ Vegetation type/percent cover. Explain: Dominated by trees with some shrubs and Herbaceous species underlying. Species include river birch, silver maple, honey locust, box elder, oak, fescue.

☐ Habitat for:

☐ Federally Listed species. Explain findings: .

☐ Fish/spawn areas. Explain findings: .

☐ Other environmentally-sensitive species. Explain findings: .

☐ Aquatic/wildlife diversity. Explain findings: .

3. Characteristics of all wetlands adjacent to the tributary (if any)

All wetland(s) being considered in the cumulative analysis: **1**

Approximately (0.06) acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

Directly abuts? (Y/N)

Size (in acres)

Directly abuts? (Y/N)

Size (in acres)

Summarize overall biological, chemical and physical functions being performed: The wetland is of poor quality and is typically dry. The wetland only ponds water during precipitation events. If the water volume or flow is great enough, it may transport water to the nearby tributary. The wetland is highly disturbed, as it is located immediately adjacent to a railroad emankment and is within active railroad right-of-way. The railroad company uses the area as an access road. Given contiounous disturbance and sporadic presence of standing water, the wetlaand likely does not provide breeding site for insects that would typically breed in wetlands, nor would the wetland support aquatic animals or wading birds..

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D:

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D:

The subject tributary and wetland are at the upstream extent of a southerly-flowing system. The subject tributary originates north of the Mt. Vernon-Outland Airport (north of IL State Route 15). The tributary flows south and crosses under IL State Route 15 via a culvert. Thus, the tributary likely captures runoff from a portion of the airport and surrounding land, and an isolated stretch of IL State Route 15. The subject tributary flows south into Seven Mile Creek (RPW). The project site is approximately 1,000 feet upstream of the intersection of the subject tributary and Seven Mile Creek. Seven Mile Creek then flows south into Casey Fork. Casey Fork flows south into the east fork of Rend Lake. Rend Lake is an 18,000-acre resevoir that was created by the damming of the Big Muddy River. The Big Muddy River Flows from northern Jefferson County south, into the west fork of Rend Lake and continues south into southern Illinois through the Rend Lake dam. The Big Muddy River is a Section 10 Water.

The subject tributary is an intermittent stream depicted as a dashed blue line on the USGS topo map and is dry most of the year. The subeuct tributary has been previously manipulated, due to the existence of a railroad bridge. The banks of the tributary have been lined with gravel, and the support piles for the bridge have been driven into the tributary bed. The physical character of the subject tributary north of IL State Route 15 (north of the project site) varies from its character south of the highway. The section of the tributary north of the highway has a rather straight geometry and no forested riparian corridor. However, the section of the tributary south of the highway does have a forested riparian corridor and meandering nature. The tributary substrate is comprised of boulders, cobbles, gravel, sands and silt. The primary substrate material is silt, which could be conducive to the downstream transport of pollutants and nutrients.

The wildlife observed in the subject tributary during the URS April 2008 site visit included one live mussel under the railroad

bridge, mussel relics along the streambank and a great blue heron wading within the tributary. Given that the tributary is most often dry, it likely does not serve as a continuous source of wildlife habitat. The tributary may function in controlling organic inputs to downstream tributaries, thereby decreasing the biological oxygen demand (BOD) on the downstream systems. This limitation of BOD would be conducive to the health and support of aquatic organisms inhabiting the downstream systems, and the higher trophic level organisms that prey on them.

The adjacent wetland is poor quality wetland in that it was formed in a linear depression immediately south of the existing railroad embankment. This area is within the existing railroad right-of-way, and functions as an access road for railroad representatives. Areas on the fringe of this access road display wetland characteristics (vegetation, soils, hydrology) as a result of the rutting and soil displacement from access road use. The site conditions indicate that this area would not retain water for a sufficient period to display wetland characteristics if it were not for the existence of the access road. Some ponding was evident in the wetland during the URS April 2008 site visit. Ponding typically only occurs during precipitation events. The region had received accumulative precipitation in the prior month. Approximately 60 feet of upland separated the subject tributary and wetland. Site conditions indicated the flow occurs from the wetland to the tributary. The hydraulic connection between the wetland and tributary is an ephemeral one. The wetland does not contain water with enough frequency to support insect species that target the stagnant, slow-moving waters of many wetlands. The wetland also would not support aquatic animals, nor provide habitat for wading birds.

3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: .

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:

- ☐ TNWs: linear feet width (ft), Or, acres.
☐ Wetlands adjacent to TNWs: acres.

2. **RPWs that flow directly or indirectly into TNWs.**

- ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: .
☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: Harding ditch is a blue line on USGS maps and on average contains 3 to 4 feet of water and carries overflow and runoff from surrounding lakes and upland communities.

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☒ Tributary waters: **100** linear feet **20** width (ft).
☐ Other non-wetland waters: acres.
 Identify type(s) of waters: .

3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**

- ☒ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

- ☒ Tributary waters: **100** linear feet **15** width (ft).
☐ Other non-wetland waters: acres.
 Identify type(s) of waters: .

4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .
☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: .

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

⁸See Footnote # 3.

5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**

- ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.

6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**

- ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.

7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

- ☐ Demonstrate that impoundment was created from “waters of the U.S.,” or
☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

E. **ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰**

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
☐ which are or could be used for industrial purposes by industries in interstate commerce.
☐ Interstate isolated waters. Explain: .
☐ Other factors. Explain: .

Identify water body and summarize rationale supporting determination: .

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet width (ft).
☐ Other non-wetland waters: acres.
Identify type(s) of waters: .
☐ Wetlands: acres.

F. **NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
☐ Prior to the Jan 2001 Supreme Court decision in “SWANCC,” the review area would have been regulated based solely on the “Migratory Bird Rule” (MBR).

- ☐ Waters do not meet the “Significant Nexus” standard, where such a finding is required for jurisdiction. Explain: .

☒ Other: (explain, if not covered above): **The onsite, adjacent wetland is in linear depression at the edge of the railroad embankment. This area functions as an access road for the railroad company. The area is on the fringe of this access road and displays wetland characteristics as a result of the displacement of soils from the access road use. This area would not retain water for sufficient period of time to display wetland characteristics if it were not for the existence of the access road. Therefore, the delineated wetland area should not be considered jurisdictional within the railroad right-of-way.**

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- ☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☐ Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).
☐ Lakes/ponds: acres.
☐ Other non-wetland waters: acres. List type of aquatic resource: .
☒ Wetlands: 0.06 acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .
☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
☒ Office concurs with data sheets/delineation report.
☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: .
☐ Corps navigable waters' study: .
☐ U.S. Geological Survey Hydrologic Atlas: .
☐ USGS NHD data.
☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: 7.5 minute - Opdyke, Illinois .
☐ USDA Natural Resources Conservation Service Soil Survey. Citation: .
☒ National wetlands inventory map(s). Cite name: 7.5 Minute -Opdyke, Illinois .
☐ State/Local wetland inventory map(s): .
☒ FEMA/FIRM maps: City of Mt. Vernon, Illinois, Panel 170308 0009 B (Panel 9 of 18).
☐ 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
☒ Photographs: ☒ Aerial (Name & Date): Google Earth/ ArcMap 9.3, 2005.
 or ☒ Other (Name & Date): Applicant Site Survey Photos, April 12th , 2008.
- ☐ Previous determination(s). File no. and date of response letter: .
☐ Applicable/supporting case law: .
☐ Applicable/supporting scientific literature: .
☐ Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD: Although the adjacent wetland is not jurisdictional and will be used as the access road to move excavation equipment to the project site, there are adjacent wetlands to the access road that should not be impacted by equipment nor should they have trees or vegetation removed from them for access to the project site. There is sufficient room to accommodate equipment along the access road. The project will impact a non-rpw tributary that is jurisdictional and a non-jurisdictional adjacent wetland that will be used to access the project site.